Protection Co., 37 La. Ann. 233. In this case the plaintiff insurance company, by its joint action with fifteen other corporations, sought to organize a corporation distinct from itself and later, being informed that one corporation cannot create another corporation, prayed for a judgment declaring that the defendant corporation never had any legal existence. The court held that a corporation is a body composed of "individuals" and is organized by "natural persons" acting under the direction of a statute and that they only can become incorporators, directors or officers. This case is closely analogous to the principal case. The general principle laid down by VANN, J., in the principal case is almost universally adhered to. He says, "corporations are created by statute and have no powers except those conferred by statute directly or indirectly." *Thomas* v. *Railroad Company*, 101 U. S. 71; *Beatty* v. *Marine Ins. Co.*, 2 Johns. (N. Y.) 109, 3 Am. Dec. 401. The merit in this case lies in the unique application of this special capacity theory of corporations to the peculiar facts of the case. Since there was no statute in New York authorizing one corporation to organize another corporation the court logically held that the proposed plan was ultra vires and utterly void and that the dissenting stockholder could prevent its execution VANN, J., says that no corporation in New York is authorized to organize another corporation, divide its assets with it and take in exchange its entire capital stock and that the purpose of the proposed action was to increase the capital stock of the old company without complying with the provisions of the statute governing the subject. The decision appealed from, PATTERSON, P. J., delivering the opinion of the court, is reported as *Schwab* v. *E. G. Potter Co.*, 129 App. Div. 36, 113 N. Y. Supp. 439, is highly instructive and is commended by VANN, J. A dissenting opinion rendered in the lower court by SCOTT, *J.*, MCLAUGHLIN, J., concurring, is an interesting presentation of the contrary view of the question.

DEEDS—CANCELLATION FOR FRAUD—FALSE REPRESENTATIONS AS TO INTENTION.—The vendee of a city lot in a residence district represented to the vendor that he intended to erect a dwelling house on the lot, when he in fact at the time intended to erect a garage on it. Upon receiving a warranty deed of the premises which contained no covenant restrictive of the use of the property, he proceeded to erect the garage. The grantor brought suit in equity to have the deed set aside, as having been obtained through fraudulent representations. *Held*, that the representation was of a present existing intent, and not a mere promise, and was equivalent to a misrepresentation of fact, so as to avoid the deed on the ground of fraud. *Adams* v. *Gillig et al.* (1909), 115 N. Y. Supp. 999.

As a general rule, misrepresentations, to amount to fraud, must be of existing facts, or facts which previously existed, and not mere promises or conjectures as to future acts or events, although such promises are subsequently broken. *Adams* v. *Schiffer*, 11 Colo. 15, 17 Pac. 21, 7 Am. St. Rep. 202; *Kitson* v. *Farwell*, 132 Ill. 327, 23 N. E. 1024; *Smith* v. *Parker*, 148 Ind. 127, 45 N. E. 770; *Dawe* v. *Morris*, 149 Mass. 188, 21 N. E. 313, 14 Am. St. Rep. 404, 4 L. R. A. 158; *Hubbard* v. *Long*, 105 Mich. 442, 63 N. W. 644;

Grove v. *Hodges,* 55 Pa. St. 504; *Closius* v. *Reiners,* 13 N. Y. App. Div. 163, 43 N. Y. Supp. 297; *Esterly Harvesting Mach. Co.* v. *Berg,* 52 Nebr. 147, 71 N. W. 952; *Fenwick* v. *Grimes,* 8 Fed. Cas. No. 4,734, 5 Cranch C. C. 603. Whether representations as to intention may constitute fraud within this rule, is a question which appears not to be entirely settled. KERR, in his work on FRAUD AND MISTAKE (page 88, BUMP'S Edition), says: "As distinguished from the false representation of a fact, the false representation as to a matter of intention, not amounting to a matter of fact, though it may have influenced a transaction, is not a fraud at law, nor does it afford a ground for relief in equity." In support of this statement, the author cites *Feret* v. *Hill,* 15 C. B. 225, stating that case thus: "Where a man was induced to grant a lease of certain premises for a stated purpose, whereas he intended to use and did use them for a different and illegal purpose, it was held that the misrepresentations did not entitle the lessor to have the lease avoided." On the other hand, BOWEN, L. J., in *Edgington* v. *Fitzmaurice,* 29 Ch. D. 459, 55 L. J. Ch. 650, 53 L. T. Rep. N. S. 369, said: "There must be a misstatement of an existing fact, but the state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of a man's mind at a particular time is, but, if it can be ascertained, it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is therefore a misstatement of fact." This is quoted with approval by the court in *Old Colony Trust Co.* v. *Dubuque Light & Traction Co.,* 89 Fed. 794. Notwithstanding the diversity of opinion thus manifested, the great weight of American authority supports the view that a false representation of an existing intention is at least equivalent to a representation of fact, and affords ground for rescission. *Troxler* v. *New Era B'ld'g Co.,* 49 S. E. 58, 137 N. C. 51; *Albitz* v. *Minneapolis etc. Ry. Co.,* 40 Minn. 476, 42 N. W. 394; *Williams* v. *Kerr,* 152 Pa. St. 560, 25 Atl. 618; *Watts* v. *Bonner,* 66 Miss. 629, 6 South 187; *Atlanta, etc. Ry. Co.* v. *Hodnett,* 36 Ga. 669; *Fenwick* v. *Grimes,* 8 Fed. Cas. No. 4,734, 5 Cranch C. C. 603. Contra,—*Murphy* v. *Murphy,* 189 Ill. 360, 59 N. E. 796; *Kitson* v. *Farwell,* 132 Ill. 327, 23 N. E. 1024. In the principal case, MCLENNAN, P. J., with whom ROBSON, J., concurred, dissented from the opinion of the majority, on the ground that the plaintiff, having voluntarily omitted "the alleged restrictive covenant" from the contract and deed, was not entitled to prove the parol representation, even for the purpose of showing that the deed had been secured by fraud. The dissenting opinion seems to entirely disregard the distinction between introducing a term into a written contract by parol, and showing by parol evidence that, by reason of fraudulent representations, no valid contract was made. Admitting that a grantor should not be allowed to enforce a parol agreement as to the use which shall be made of the land conveyed by deed, it seems, on principle, only reasonable that he may, if content with such assurance, trust to the original intention of the vendee as to the use to be made of it; and that, to that end, he should be entitled to rely upon the vendee's representations as to his intention.